

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Nov 07, 2024**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JEROME CURRY, JR.,

Plaintiff,

v.

JOANNA BENDER (King County  
Superior Court), CANDACE L.  
HOOPER (Kittitas County Superior  
Court), JUDGE TRACY STABB  
(Washington State Court of Appeals,  
Division III), KING COUNTY  
PROSECUTOR'S OFFICE,  
KITTTITAS COUNTY  
PROSECUTOR'S OFFICE, KING  
COUNTY PUBLIC DEFENDERS,  
KITTTITAS COUNTY PUBLIC  
DEFENDERS, MATT MILLS (Kittitas  
County Prosecutor), ZACHARY R.  
WILLIAMS (Kittitas County  
Prosecutor), GREGORY L. ZEMPEL  
(Kittitas County Prosecutor), MARGIE  
ALUMBAUGH (Kittitas County  
Attorney), ETOY ALFORD (Kittitas  
County Attorney), ROBERT COSSEY  
(Spokane County Attorney), KAREN  
BOWEN (Kittitas County Clerk of  
Court), SARAH KEITH (Kittitas

NO: 1:24-CV-3141-TOR

ORDER DISMISSING ACTION

1 County Court Administrator), LEA  
2 ENNIS (King County/Division I  
3 Administrator Clerk), TRISTEN  
4 WORTHEN (Spokane  
5 County/Division 3 Administrator or  
6 Clerk), ERIN L. LENNON (King  
7 County Superior Court Clerk), SARAH  
8 PENDLETON (Olympia Duty Clerk),  
9 PATICIA GOLDMAN (King County  
10 Prosecutor), DAVID S. KEENAN  
11 (King County Judge), NARESH  
12 RAJAN (King County Public Defense  
13 Counsel), JUDGE WHALEN  
14 (Washington Supreme Court Olympia),  
15 CATHERINE CORNWALL (King  
16 County Clerk), JENNIFER (King  
17 County DRW), KING COUNTY BAR  
18 ASSOCIATION, MECHELE STORM  
19 (King County ACLU), MR.  
20 CALLNER (Judicial Commission  
Conduct Olympia), CLAY MYERS  
(Kittitas County Sheriff), ZACHERY  
GREEN (Kittitas County Sheriff),  
TYRELL NIELSEN (Kittitas County),  
JOSE SERRANO (Kittitas County),  
CHARLES BERG (Kittitas County),  
ROBIN LOVELL (Kittitas County),  
KITCOM CAD (Kittitas County),  
SYDNEE STERKEL (Kittitas County),  
CPL NIELSEN (I-90), WSP'S  
VICTORIA (I-90), CHRISTEN  
WHITE (I-90), DENSLEY ARON  
(Kittitas County), THOMAS  
MEGARGLE (Kittitas County),  
LOGAN SWIFT (Kittitas County), K.  
SWIFT, CPC RICHARD PRYOR, and  
DEVIN DONALD BAKER,

Defendants.

1       BEFORE THE COURT is Plaintiff Jerome Curry, Jr.'s First Amended  
2 Complaint. ECF No. 19. Plaintiff, a prisoner at the Kittitas County Corrections  
3 Center in Ellensburg, Washington, is proceeding *pro se* and *in forma pauperis*. ECF  
4 No. 17. Defendants have not been served.

5       As a general rule, an amended complaint supersedes the original complaint  
6 and renders it without legal effect. *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 927 (9th  
7 Cir. 2012). Therefore, “[a]ll causes of action alleged in an original complaint which  
8 are not alleged in an amended complaint are waived.” *King v. Atiyeh*, 814 F.2d 565,  
9 567 (9th Cir. 1987) (citing *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th  
10 Cir. 1981)), *overruled in part by Lacey*, 693 F.3d at 928 (any claims voluntarily  
11 dismissed are considered to be waived if not replead).

12       Furthermore, defendants not named in an amended complaint are no longer  
13 defendants in the action. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.  
14 1992). Therefore, “No Named Defendant” was terminated from this action and  
15 Defendants Joanna Bender (King County Superior Court), Candace L. Hooper  
16 (Kittitas County Superior Court), Judge Tracy Stabb (Washington State Court of  
17 Appeals, Division III), King County Prosecutor’s Office, Kittitas County  
18 Prosecutor’s Office, King County Public Defenders, Kittitas County Public  
19 Defenders, Matt Mills (Kittitas County Prosecutor), Zachary R. Williams (Kittitas  
20 County Prosecutor), Gregory L. Zempel (Kittitas County Prosecutor), Margie

1 Alumbaugh (Kittitas County Attorney), Etoy Alford (Kittitas County Attorney),  
2 Robert Cossey (Spokane County Attorney), Karen Bowen (Kittitas County Clerk of  
3 Court), Sarah Keith (Kittitas County Court Administrator), Lea Ennis (King  
4 County/Division I Administrator Clerk), Tristen Worthen (Spokane  
5 County/Division 3 Administrator or Clerk), Erin L. Lennon (King County Superior  
6 Court Clerk), Sarah Pendleton (Olympia Duty Clerk), Patricia Goldman (King  
7 County Prosecutor), David S. Keenan (King County Judge), Naresh Rajan (King  
8 County Public Defense Counsel), Judge Whalen (Washington Supreme Court  
9 Olympia), Catherine Cornwall (King County Clerk), Jennifer (King County DRW),  
10 King County Bar Association, Mechele Storm (King County ACLU), Mr. Callner  
11 (Judicial Commission Conduct Olympia), Clay Myers (Kittitas County Sheriff),  
12 Zachery Green (Kittitas County Sheriff), Tyrell Nielsen (Kittitas County), Jose  
13 Serrano (Kittitas County), Charles Berg (Kittitas County), Robin Lovell (Kittitas  
14 County), Kitcom CAD (Kittitas County), Sydnee Sterkel (Kittitas County), CPL  
15 Nielsen (I-90), WSP's Victoria (I-90), Christen White (I-90), Densley Aron (Kittitas  
16 County), Thomas Megargle (Kittitas County), Logan Swift (Kittitas County), K.  
17 Swift, CPC Richard Pryor, and Devin Donald Baker were added.

18       Liberally construing the entirety of the First Amended Complaint in the light  
19 most favorable to Plaintiff, however, the Court finds that he has failed to cure the  
20 deficiencies of his initial complaint as set forth in the Order to Amend or Voluntarily

1 Dismiss Complaint and Denying Motion for Appointment of Counsel. ECF No. 18.  
2 Plaintiff's First Amended Complaint does not show "in a clear and concise manner  
3 how persons identified as Defendants, who are person acting under color of state law  
4 and are not immune from suit, have violated his constitutionally protected rights."  
5 *Id.* at 17. The Court cautioned Plaintiff that his failure to submit such an amended  
6 complaint would result in the dismissal of this action. *Id.*

7 The Court finds the First Amended Complaint against various judicial  
8 officers, prosecutors, defense attorneys, court clerks, and law enforcement officers  
9 concerning allegedly altered evidence in his pending state court criminal matter,  
10 ECF No. 19, fails to state a claim upon which this Court can grant him relief. *See*  
11 *Stump v. Sparkman*, 435 U.S. 349, 356 (1978) (judicial immunity); *Ashelman v.*  
12 *Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986) (en banc) (same) ; *Imbler v. Pachtman*,  
13 424 U.S. 409, 430-31 (1976) (prosecutorial immunity); *Miranda v. Clark County*,  
14 319 F.3d 465,468 (9th Cir. 2003) (*en banc*) (public defender not considered a state  
15 actor); *Younger v. Harris*, 401 U.S. 37, 45 (1971) (in most circumstances a federal  
16 court should abstain from directly interfering with ongoing criminal proceedings in  
17 state court); *Beltran v. California*, 871 F.2d 777, 782 (9th Cir. 1988) ("Younger  
18 abstention requires dismissal of the federal action."); *Linda R.S. v. Richard D.*, 410  
19 U.S. 614, 619 (1973) ("a private citizen lacks a judicially cognizable interest in the  
20 prosecution or nonprosecution of another.").

1 This Court instructed Plaintiff to submit no further supplemental materials.  
2 ECF No. 18 at 17. Plaintiff has disregarded this instruction and continues to file  
3 supplemental materials, including what appear to be documents prepared for his state  
4 criminal proceeding and a second copy of the First Amended Complaint. ECF Nos.  
5 20 and 21. To the extent Plaintiff may wish to pursue claims arising in the Western  
6 District of Washington, venue is not proper in this District, and the Court finds that  
7 it would not be in the interest of justice to transfer this action. *See* 28 U.S.C. §  
8 1406(a). Plaintiff is free to file a separate action in the Western District of  
9 Washington. He shall file no further supplemental materials in this action.

10 Having granted Plaintiff the opportunity to amend and finding that further  
11 amendment would be futile under the circumstances of this case, *see Cervantes v.*  
12 *Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011), the Court will  
13 dismiss the First Amended Complaint, ECF No. 19, but without prejudice to Plaintiff  
14 pursuing his claims in his pending state court criminal proceeding, through the state  
15 appellate system, and if necessary, through subsequent state and federal collateral  
16 review proceedings.

17 Accordingly, **IT IS HEREBY ORDERED:**

- 18 1. The First Amended Complaint, ECF No. 19, is **DISMISSED without**  
19 **prejudice** to Plaintiff pursuing his claims in his state criminal proceeding and  
20 subsequent state appellate and state and federal collateral review proceedings.

2. This dismissal will not count as a dismissal under 28 U.S.C. § 1915(g). *See Washington v. Los Angeles Cty. Sheriff's Dep't*, 833 F.3d 1048 (9th Cir. 2016).

3. Plaintiff's *in forma pauperis* status is hereby **REVOKED**.

4. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of this Order would not be taken in good faith and would lack any arguable basis in law or fact.

The Clerk of Court is directed to enter this Order and Judgment accordingly, provide copies to Plaintiff at his last known address, and **CLOSE** the file.

**DATED** November 7, 2024.



*Thomas O. Rice*  
THOMAS O. RICE  
United States District Judge